

October 16, 2008

The Honorable Gerald W. Hocker
House of Representatives
Legislative Hall
P.O. Box 1401
Dover, DE 19903

Re: Request for Attorney General's Opinion/ Ocean View Charter

Dear Representative Hocker:

In your correspondence dated September 10, 2008 to the Attorney General, you asked whether the Town of Ocean View's charter permits the Chief of Police to report directly to the Mayor. We have reviewed the Ocean View Charter, the Ocean View Code, and the May 1, 2006 contract between the Town and Kenneth McLaughlin. In our opinion the contract does not conflict with the Charter.

Section 2.204 of the Charter provides that the Mayor is both the ceremonial head of Town government and "shall have such other powers and perform such other duties as may be ... required of him by the Council, if not inconsistent with this Charter." The May 1, 2006 contract states in paragraph 3.A. that the Chief of Police is "under the direction and control" of the Mayor. Therefore, the Council has required the Mayor to supervise the Chief of Police.

There may be confusion as to whether that grant of authority to the Mayor conflicts with § 2.102 of the Charter, which gives the Town Manager the power and duty to "[a]ppoint and remove all subordinate officers and employees of the town in accordance with the rules and regulations of any merit system adopted by the Town." But the Chief of Police is not a merit system employee; he is a contractual employee, and according to § 28.1 of the Code of the Town of Ocean View, his terms of employment are not covered by the merit system, but by his contract. Section 28.1 provides that the personnel "policies herein apply to all positions in the service of the Town of Ocean View *except those covered by a specific contract of employment*. In those instances, the contract shall take precedence." (emphasis added).

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The Charter gives the Town Manager only the authority to hire and fire employees pursuant to Chapter 28 of the Town Code. Section 28.1 of the Code specifically exempts contractual employees, such as the Chief of Police, from the Town Manager's authority. Therefore, the Council can require that the Chief of Police report to the Mayor.

Very truly yours,

Lawrence W. Lewis
State Solicitor

cc: The Honorable Gordon E. Wood, Sr.
Mayor of Ocean View